



## **WHITEPAPER ALERT!**

### **TEN COMMON ESTATE PLANNING MISTAKES (AND HOW TO AVOID THEM!)**

**Introduction:** Estate planning *is* for everyone. If you have a bank account, house, retirement account, or even a life insurance policy, chances are you've got assets that need management during incapacity and after death. Even the most modest estate needs attention in order to protect you and your loved ones, so we've put together this Whitepaper to tell you about the 10 most common estate planning mistakes people make, and what you can do to avoid them. Let's get started!

- 1. Not Planning Means Planning to Fail.** The biggest estate planning mistake is not having a plan at all. Failing to plan means you've decided to let the State dictate your estate plan in the event of your incapacity or death. This failure can result in persons being appointed legal guardians over your and/or your estate, costing you and your loved family thousands of dollars in unnecessary, unwarranted legal fees and costs. Even taking the smallest of steps by creating a Simple Will can address who will be in charge in the event of your incapacity or death, and you wish for assets to be distributed to your loved ones.
- 2. Making Excuses.** That's right, No. 2 is talking yourself out of doing it. We've heard it all: "I don't have enough; My estate isn't complicated; My children know what to do; My spouse knows what I want; It's too expensive to meet with a lawyer." When we've asked people why they've come to see us, most often they sheepishly admit it was time to finally make their Will. Our oldest client came to us for his first time to make his Will at the age of 95. When we asked why now, he said he'd put it off long enough! We certainly don't advise you to wait until your 95<sup>th</sup> birthday. If you're married, have children, or accumulated any assets, you need an estate plan. Others are counting you to do what's right. At Tanko Law Office, we make it easy. The first estate planning consultation is always FREE. We take the stress out of the entire process. You'll leave our office with peace of mind knowing an estate planning professional got it right – no excuses.
- 3. Choosing the Wrong Plan.** No two clients are exactly the same and, therefore, not every estate plan is right for you. An estate plan is affected by a myriad of factors such as the persons in your life, who do you trust, the value of your assets, the character of your estate, and who will manage your estate when you cannot. Take the first step and meet with a qualified estate planning professional to learn about the importance of a Will, a Power of Attorney, a Health Care Proxy, a Living Trust, Asset Protection and Business Planning. At Tanko Law Office, our goal is to educate our clients about the importance of these issues and help them decide which documents will best meet their needs. One estate plan doesn't fit all, and we're here to help you determine what's the best plan for you.

4. **Skip the Plan, Just Add the Kids to Title.** Lots of people have their spouses, children, partners and even friends listed on accounts, titles and deeds. After all, it seems like a pretty easy thing to do. It may avoid probate and it could put someone in charge to pay bills when you can't. But did you know that by placing someone on title as a joint owner exposes you to that joint owner's liabilities? Did you know that a jointly owned asset won't be controlled by Will? Did you know that you can't remove a joint owner from title without their permission? Careful consideration needs to be given when adding a child or other joint owner to your assets. Jointly-held assets can become taken to satisfy a joint owner's creditor claims, divorce proceedings, bankruptcy, business dealings, and could even be wrongfully taken from you – all because of good intentions.
  
5. **Choosing the Wrong Person.** You've heard the phrase, "different strokes for different folks." Well, that's true about estate planning. The person you think who may be right to serve as your executor, trustee or power of attorney may not be the best person after all. Oftentimes clients will nominate their spouse, a child, or close friend to serve in a fiduciary role. What's important to consider when nominating a fiduciary is whether or not the person is qualified for the position. Executors, trustees and powers of attorney must have an understanding of financial management, investing, and accounting. Persons serving as guardian or as a health care proxy need to safe guard confidential health care information as well as being able to grasp the gravamen of the care being administered. Sometimes choosing an independent fiduciary may be the best option of all, such as a professional in law, accounting, finance or health care. The people serving under your estate plan are the critical elements to making it work and great care should be given to their nominations.
  
6. **Unequal Distributions Can Create Unexpected Litigation.** It's not uncommon for clients to attempt to treat all of their heirs equally. However, achieving equal distributions sometimes are impractical or even impossible. When dividing up a family business, it may be more practical to leave the business to one or just a couple of heirs and leave other assets of comparable value to other heirs. The same is true for real estate. By leaving distributions of equal shares in these types of assets to heirs who may have different views on what to do with the asset can result in expensive litigation. A properly drafted Will or Trust will address these distributions, setting for the reasons and parameters to minimize the chance of litigation amongst your heirs or beneficiaries. You would be well-advised to seek the advice of a professional in setting forth your distribution plans.
  
7. **Failing to Understand Life Insurance.** Life insurance policies play an important part in your estate. The policy will provide liquidity and security for your estate and loved ones at a time of great uncertainty and grief. But understanding how the policy benefits will be disbursed, to whom, and thereafter managed are as important as procuring the policy in the first place. If you have a spouse, child, a minor or other beneficiary who is a spendthrift, has poor money management skills, or has special needs, identifying them as a beneficiary on the policy may be the worst thing you could. Instead, with proper planning, you could use your estate or a life insurance trust to receive the policy proceeds and properly manage the funds for the long term. Your generous gift would not then be squandered, attacked by creditors, or disqualify a special needs beneficiary from federal or state life-saving support benefits.

8. **Failing to Consider Outstanding Debts and Obligations.** There are many different types of debts clients will have outstanding upon their deaths. They can include credit card debt, medical bills, mortgages, car loans, income taxes, death taxes, etc. Some debts need to be addressed right away upon your passing, such as a mortgage, car loan, or property insurance coverage. If these debts are not paid timely, the secured lender can foreclose and repossess the property, or in the case of property insurance coverage, the property could be lost altogether from fire, flood or other disaster. Unsecured debts can be overwhelming and dissipate the size of your estate quickly if not properly administered. There are specific rules for creditors to get paid from your estate, and the failure of the creditor or your fiduciary to follow those rules can be costly. Also, not fully understanding the impact of your debts upon your estate can result in inequitable distributions among your heirs and beneficiaries. Some may inadvertently be responsible for paying large portions of your debt while others paying nothing at all. Having a solid understanding of your outstanding debts will help you create the distribution plan you intended.
  
9. **Not Updating Your Plan.** Once you've executed your estate plan, it should be reviewed periodically. Life changes can dramatically affect who would be an appropriate person to serve as your fiduciary as well as to whom and how assets will be distributed from your estate. Failing to update your estate plan can result in unintended consequences, such as distributing assets to minor children, adversely affecting a special needs beneficiary, or creating estate and inheritance tax consequences. You should review your estate plan annually and contact your estate planning attorney with any updates and changes.
  
10. **Failing to Meet with an Estate Planning Professional.** Finally, No. 10 is failing to meet with an estate planning professional. A good estate planning attorney will incorporate the professionals who look out for you: your financial planner, accountant, insurance agent, business partners, and medical professionals. All of these professionals impact the type of estate plan that's best for you. Some of the biggest challenges we see here at Tanko Law Office are when people try to do their own estate planning. With a variety of DIY documents available, it's not unusual to find mistakes in drafting, confusion of intent, incomplete nominations, or failures in formality of execution. Any one of these short-comings can result in litigation and even nullity of your estate planning documents. When you meet with an estate planning attorney like those at Tanko Law Office, you'll receive a comprehensive evaluation that considers your family dynamics, asset values and character, and long-term goals for yourself and family. And the best part, your first consultation is always FREE at Tanko Law Office. Do it right the first time – call us today! (406) 257-3711

